# SUPREME COURT OF THE UNITED STATES

## PETTY MOTOR COMPANY *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 85–798. Decided March 3, 1986

The petition for writ of certiorari is denied.

JUSTICE WHITE, with whom THE CHIEF JUSTICE joins, dissenting.

In this case the United States Court of Appeals for the Tenth Circuit held that as a matter of federal law a United States marshal's conducting a judicial foreclosure sale constitutes "seizing or levying" within the meaning of 28 U. S. C. § 1921.* As respondent concedes, this decision conflicts with the decisions of three Courts of Appeals that have held that costs could not be taxed under § 1921 in cases involving judicial foreclosure sales. See *Travelers Insurance Co.* v. *Lawrence*, 509 F. 2d 83 (CA9 1974); *James T. Barnes & Co.* v. *United States*, 593 F. 2d 352 (CA8 1979); *Federal Land Bank of Saint Paul* v. *Hassler*, 595 F. 2d 356 (CA6 1979). I would grant certiorari to resolve this conflict.

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*Title 28 U. S. C. § 1921 provides in relevant part:

"Only the following fees of United States marshals shall be collected and taxed as costs, except as otherwise provided:

. . . . .

"For seizing or levying on property (including seizures in admiralty), disposing of the same by sale, setoff, or otherwise and receiving and paying over money, commissions of 3 per centum on the first $1,000 of the amounts collected and 1½ per centum on the excess of any sum over $1,000."